

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Andres Gomez,

Plaintiff,

v.

**Wheeler Winery, Inc., dba Buena
Vista Historical Winery, a
California Corporation;**
,

Defendants.

Case No.

**Complaint for Damages and
Injunctive Relief for Violations
of: American's With Disabilities
Act; Unruh Civil Rights Act**

**NOT RELATING TO A
CONSTRUCTION-RELATED
BARRIER AS DEFINED IN CAL.
CIV. CODE § 55.3**

Plaintiff Andres Gomez ("Plaintiff") complains of Wheeler Winery, Inc.
dba Buena Vista Historical Winery, a California Corporation; and Does 1-10
("Defendant"), and alleges as follows:

PARTIES:

1. Plaintiff is a visually-impaired individual and a member of a protected
class of persons under the Americans with Disabilities Act. Plaintiff uses
Talkback or similar software to navigate websites and applications on

1 electronic devices. Plaintiff is legally blind¹ and cannot use an electronic
2 device without assistance of screen-reader software (“SRS”).

3 2. Defendant Wheeler Winery, Inc. dba Buena Vista Historical Winery
4 (“Buena Vista Historical Winery”) owned or operated Buena Vista Historical
5 Winery located in Sonoma County in March 2021 and August 2021.

6 3. Defendant Buena Vista Historical Winery owns or operates Buena Vista
7 Historical Winery located in Sonoma County currently.

8 4. Defendant Buena Vista Historical Winery owned or operated the Buena
9 Vista Historical Winery website, with a root domain of:
10 <https://buenavistawinery.com> and all related domains, sub-domains and/or
11 content contained within it, (“Website”) in March 2021 and August 2021.

12 5. Defendant Buena Vista Historical Winery owns or operates the Buena
13 Vista Historical Winery Website currently.

14 6. Plaintiff does not know the true names of Defendants, their business
15 capacities, their ownership connection to the property and business, or their
16 relative responsibilities in causing the access violations herein complained of,
17 and alleges a joint venture and common enterprise by all such Defendants.
18 Plaintiff is informed and believes that each of the Defendants herein, is
19 responsible in some capacity for the events herein alleged or is a necessary
20 party for obtaining appropriate relief. Plaintiff will seek leave to amend when
21 the true names, capacities, connections, and responsibilities of the Defendants
22 are ascertained.

23
24 **JURISDICTION & VENUE:**

25
26 ¹ Plaintiff uses the terms “visually-impaired” or “blind” interchangeably to
27 refer to individuals, including himself, who meet the legal definition of
28 blindness. (visual acuity of 20/200 or worse.) Some individuals who meet
these criteria have no vision, others have limited vision.

1 7. The Court has subject matter jurisdiction over the action pursuant to 28
2 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
3 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq. (“ADA”)

4 8. This court has supplemental jurisdiction over Plaintiff’s non-federal
5 claims pursuant to 28 U.S.C. § 1367 because Plaintiff’s Unruh claims are
6 formed from the same case and/or controversy and are related to Plaintiff’s
7 ADA claims. A violation of the ADA is a violation of Unruh. (Cal. Code §51(f).

8 9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b). Defendant
9 is subject to personal jurisdiction in this District due to its business contacts
10 with the District, and a substantial portion of the complained of conduct
11 occurred in this District.

12
13 **FACTUAL ALLEGATIONS:**

14 10. Plaintiff is a legally blind person and a member of a protected class
15 under the ADA. Plaintiff is proficient with and uses SRS to access the internet
16 and read internet content on electronic devices.

17 11. Plaintiff cannot use electronic devices without the assistance of screen
18 reader software (“SRS”).

19 12. Buena Vista Historical Winery operates privileges, goods, or services
20 out of a physical location in California. These goods and services are open to
21 the public, places of public accommodation, and business establishments.

22 13. The Website is a nexus between Buena Vista Historical Winery’s
23 customers and the terrestrial based privileges, goods or services offered by
24 Buena Vista Historical Winery.

25 14. Buena Vista Historical Winery offers websites and digital booking as
26 some of the facilities, privileges, and advantages offered by Defendants to
27 patrons of the Buena Vista Historical Winery in connection with their
28 patronage at the Buena Vista Historical Winery.

1 15. Among the services offered include details about Buena Vista Historical
2 Winery itself, location and contact information; wine products; information
3 about the prices, online ordering, deals and promotions.

4 16. Plaintiff was a prospective customer who wished to access Defendant's
5 services.

6 17. Plaintiff visited the Website in March 2021 and August 2021 with the
7 intent purchase wine, or do some wine tasting, or potentially experience
8 making their own wine.

9 18. When Plaintiff attempted to navigate the Website, Plaintiff encountered
10 numerous accessibility design faults that prevented him from navigating the
11 site successfully using SRS. Investigation into his experience revealed barriers,
12 including, but not limited to:

- 13 a. Images on the website lack a text equivalent readable by
14 SRS.
- 15 b. The visualization of the webpage contains impermissibly
16 low contrast enabling differentiation of background and
17 foreground elements.

18 19. These inaccessible elements rendered the ostensibly "accessible"
19 elements inaccessible as a result of difficulty and confusion navigating the
20 numerous inaccessible elements.

21 20. Currently, the defendants either fail to provide an accessible website or
22 Defendants have failed to maintain in working and useable conditions those
23 website features required to provide ready access to persons with disabilities.

24 21. Despite multiple attempts to access the Website using Plaintiff's
25 electronic device, Plaintiff has been denied the full use and enjoyment of the
26 facilities and services offered by Defendants as a result of the accessibility
27 barriers on the Website.

28 22. Plaintiff personally encountered accessibility barriers and has actual

1 knowledge of them.

2 23. By failing to provide an accessible website, the Defendants denied
3 Plaintiff full and equal access to the facilities, privileges or advantages offered
4 to their customers.

5 24. Plaintiff has been deterred from returning to the Website as a result of
6 these prior experiences.

7 25. The failure to provide accessible facilities created difficulty and
8 discomfort for the Plaintiff.

9 26. If the website had been constructed equally accessible to all individuals,
10 Plaintiff would have been able to navigate the Website and find information on
11 the winery and its products and services.

12 27. Additionally, Plaintiff is a tester in this litigation and seeks future
13 compliance with all federal and state laws. Plaintiff will return to the Website
14 to avail himself of its goods and services and to determine compliance with the
15 disability access laws once it is represented to him that Buena Vista Historical
16 Winery and Website are accessible.

17 28. Plaintiff is currently deterred from doing so because of Plaintiff's
18 knowledge of the existing barriers and uncertainty about the existence of yet
19 other barriers on the Website. If the barriers are not removed, Plaintiff will
20 face unlawful and discriminatory barriers again.

21 29. The barriers identified above violate easily accessible, well-established
22 industry standard guidelines for making websites accessible to people with
23 visual-impairments that use SRS to access websites. Given the prevalence of
24 websites that have implemented these standards and created accessible
25 websites, it is readily achievable to construct an accessible website without
26 undue burden on Buena Vista Historical Winery or a fundamental alteration of
27 the purpose of the Website.

28 30. Compliance with W3C Web Content Accessibility Guidelines

1 (“WCAG”) 2.0 AA standards is a viable remedy for these deficiencies and a
2 standard that has been adopted by California courts for website accessibility.

3 31. It’s been established that failure to remove these inaccessible conditions
4 violates the ADA and California law and requiring compliance with industry
5 access standards is a remedy available to the plaintiff.

6 32. The Website was intentionally designed, and based on information and
7 belief, it is the Defendants’ policy and practice to deny Plaintiff access to the
8 Website, and as a result, denies the goods and services that are otherwise
9 available to patrons of Buena Vista Historical Winery.

10 33. Due to the failure to construct and operate the website in line with
11 industry standards, Plaintiff has been denied equal access to Defendant’s
12 winery and the various goods, services, privileges, opportunities, and benefits
13 offered to the public by Buena Vista Historical Winery.

14 34. Given the nature of the barriers and violations alleged herein, the
15 Plaintiff alleges, on information and belief, that there are other violations and
16 barriers on the website, and/or at Buena Vista Historical Winery, that relate to
17 his disability. In addition to the barriers he personally encountered, Plaintiff
18 intends to seek removal of all barriers on the Website that relate to his
19 disability. See *Doran v. 7-Eleven* (9th Cir. 2008) 524 F.3d 1034 (holding that
20 once a plaintiff encounters one barrier, they can sue to have all barriers that
21 relate to their disability removed regardless of whether they personally
22 encountered the barrier).

23 35. Plaintiff will amend the complaint, to provide further notice regarding
24 the scope of the additional demanded remediation in the event additional
25 barriers are uncovered through discovery. However, please be on notice that
26 the plaintiff seeks to have all barriers related to his disability remedied.

27
28 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**

1 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
2 Defendants.) (42 U.S.C. section 12101, et seq.)

3 36. Plaintiff repleads and incorporates by reference, as if fully set forth
4 again herein, the allegations contained in all prior paragraphs of this
5 complaint. Buena Vista Historical Winery is a public accommodation with the
6 definition of Title III of the ADA, 42 USC § 12181.

7 37. The website provided by the Defendant is a service, privilege or
8 advantage and extension of Buena Vista Historical Winery's physical presence
9 and terrestrial services.

10 38. When a business provides services such as a website, it must provide an
11 accessible website.

12 39. Here, an accessible website has not been provided. A failure to provide
13 an accessible website is unlawful discrimination against persons with
14 disabilities.

15 40. Under the ADA, it is an act of discrimination to fail to ensure that the
16 privileges, advantages, accommodations, facilities, goods, and services of any
17 place of public accommodation is offered on a full and equal basis by anyone
18 who owns, leases, or operates a place of public accommodation. *See*: 42 U.S.C.
19 § 12182(a). Discrimination is defined, inter alia, as follows: "A failure to make
20 reasonable modifications in policies, practices, or procedures, when such
21 modifications are necessary to afford goods, services, facilities, privileges,
22 advantages, or accommodations to individuals with disabilities, unless the
23 accommodation would work a fundamental alteration of those services and
24 facilities. 42 U.S.C. § 12182(b)(2)(A)(ii)."

25 41. Here, the failure to ensure that the accessible facilities were available
26 and ready to be used by the plaintiff is a violation of the law.

27 42. Pursuant to 42 U.S.C. § 12188 and the remedies, procedures and rights
28 set forth and incorporated therein, Plaintiff requests relief as set forth below.

II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL RIGHTS ACT (On behalf of Plaintiff and against all Defendants.) (Cal. Civ. Code § 51-53.)

43. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia, that persons with disabilities are entitled to full and equal accommodations, advantages, facilities, privileges, or services in all business establishment of every kind whatsoever within the jurisdiction of the State of California. Cal. Civ. Code § 51(b).

44. The Unruh Act provides that a violation of the ADA is a violation of the Unruh Act. Cal. Civ. Code § 51(f).

45. Defendants’ acts and omissions, as herein alleged, have violated the Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s rights to full and equal use of the accommodations, advantages, facilities, privileges, goods, or services offered.

46. Because the violation of the Unruh Civil Rights Act resulted in difficulty, discomfort or embarrassment for the plaintiff, the defendants are also each responsible for statutory damages, i.e., a civil penalty. Cal. Civ. Code § 55.56(a)-(c).

47. Pursuant to 42 U.S.C. § 12188 and the remedies, procedures and rights set forth and incorporated therein, Plaintiff requests relief as set forth below.

PRAYER:

Wherefore, Plaintiff prays that this Court award damages and provide relief as follows:

1 1. A Declaratory Judgment that at the commencement of this action
 2 Defendants were in violation of the requirements of the ADA due to
 3 Defendants' failures to take action to ensure that its Website was fully
 4 accessible to and independently usable by blind and visually-impaired
 5 individuals.

6 2. For equitable nominal damages for violation of civil rights. See
 7 *Uzuegbunam v. Preczewski*, 141 S.Ct. 792 (2021) and any other equitable relief
 8 the Court finds appropriate.

9 3. Pursuant to 42 U.S.C § 12181, a preliminary and permanent injunction
 10 enjoining Defendants from violating the ADA with respect to its Website.

11 4. Damages under the Unruh Civil Rights Act § 51², which provides for
 12 actual damages and a statutory minimum of \$4,000 for each offense.

13 5. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
 14 to 42 U.S.C. § 12205; and Cal. Civ. Code § 52.

15
 16 Dated: December 20, 2021 CENTER FOR DISABILITY ACCESS

17
 18 

19 By: _____

20 Amanda Seabock, Esq.
 21 Attorney for Plaintiff

22
 23
 24
 25
 26 _____
 27 ² Note: the plaintiff is not invoking section 55 of the California Civil Code and
 28 is not seeking injunctive relief under the Disabled Persons Act at all.